

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL No. 1823 OF 2006.

Western Steel Corporation
and Others.

..Appellants.

Vs.

The Trustees of Port
of Bombay.

..Respondents.

Mr. M.L. Palan i/b J.P.Thakkar with R.H. Bhanwari
for the Appellants.

Mr. U.J. Makhija i/b Motiwalla & Co.
for Respondent No.1.

**CORAM: S.B.DESHMUKH,J.
DATED: 18.9.2006.**

P.C.:-

1] Heard the learned Counsel for the
Parties.

2] Admit.

3] By consent of the Parties, the
appeal is taken up for final hearing.

4] The present Appellant had filed
S.C. Suit No. 2334 of 1983 in the Court
of City Civil Court at Bombay for perpetual

injunction restraining the Defendants from disturbing possession and taking forcible possession of the suit property. Defendant No.1, in the Suit, is the Trustees of Port of Bombay and Defendant No.2 in the Suit is the original lessee. After service Defendant No.1, the Trustees of the Port of Bombay, entered appearance and filed Written Statement in response to the Suit. The Copy of the Written Statement is also annexed with this Appeal. The Trial Court after considering pleadings of the Parties, framed about six issues. It appears that the learned Trial Court disposed of the Suit, in relation to issue No.2 i.e. maintainability of the Suit for want of notice under Section 120 of the Major Port Trusts Act. The Trial Court has not recorded any finding in relation to Issue Nos. 1,3,4 and 5. The Trial Court was of the opinion that since no notice under Section 120 of the Major Port Trusts Act was served to Defendant No.1, Suit is not maintainable and, therefore, according to the Trial Court, other issues do not survive for consideration.

5] The learned Counsel for the Plaintiffs relied on the Judgment of the Apex Court in the matter of **The Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (dead) by L.Rs.** reported in U.J.(S.C.)1979, 157.

6] The learned Counsel for the Respondent, as per the directions of this Court has made available a copy of the Agreement in between the Defendant No.1 and Defendant No.2 for allotment of the plot No. 255 in Block No.2A at Coal Bunder, Darukhana, Bombay i.e. the Suit property. The copy of the Monthly Tenancy of Port Trust Land for the Storage of Goods in the Open, dated 4th May, 1973 is also filed on record.

7] It appears that Defendant No.1 had filed a Suit No. 52 of 1974 in this High Court against the Defendant No.2, seeking possession of the Suit property. In Suit

No. 52 of 1974, the decree is passed by this Court in favour of Defendant No.1. The learned Counsel for Respondent No.1, states, that Execution Proceeding is pending in the Executing Court.

8] I have considered the pleadings in the plaint as well as Written Statement and Issues framed by the Trial Court. The Trial Court, ordinarily should decide all the issues, arising between the Parties, considering the evidence led on behalf of the Parties. Issues regarding maintainability of the Suit and/or for want of notice also need to be considered in relation to the evidence led on behalf of the Parties. Recording finding on all issues including the issue regarding jurisdiction and maintainability of the Suit facilitates the Appellate/Superior Court to decide the lis between the Parties finally. In case, the Trial Court has disposed of the Suit, without resorting to provision laid down under Section 9-A of The Code of Civil Procedure or on preliminary issue, in that eventuality if

the Appellate Court comes to different conclusion, the only course open for Appellate Court is to remand the matter for retrial before the Trial Court. In the present case, in my view, it would have been appropriate on the part of the Trial Court to decide and dispose of the Suit on all issues arising between the parties on the basis of documentary as well as oral evidence, if any, led by the Parties. Since the Suit is disposed of only on the ground of lack of notice under Section 120 of the Major Port Trust Act, judgment and decree passed by the Trial Court needs to be quashed and set aside.

. However, I have not heard the Parties on any of the issues or merits of the case. All the contentions are left open to the Parties to the Suit, to be agitated and decided by the Trial Court. In this view of the matter, Judgment and decree passed by the Trial Court in S.C. Suit No. 2334 of 1983 needs to be quashed and set aside. However, looking to the fact that Suit was pending in the Trial

Court, for pretty long time, some time frame for early disposal of the Suit also needs to be given to the Trial Court.

9] In the result, Judgment and Decree passed by the Trial Court in S.C. Suit No. 2334 of 1983 stands quashed and set aside. Hearing of the Suit is remanded to the Trial Court.

10] It is made clear that monthly tenancy of the Port Trust land for the Storage of goods in the open, its document filed in this Appeal, is not in relation to the Suit property and Defendant No.2. However, it is the format used by Defendant No.1.

11] The Trial Court shall give opportunity to the Parties to lead oral as well as documentary evidence, if necessary, and decide the Suit expeditiously, and as far as possible, on or before 31st of March, 2007.

12] Mo order as to costs.

13] The Parties are directed to appear
in the Trial Court on 3rd of October, 2006.

[S.B.DESHMUKH,J.]